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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,000	02/15/2001	Vadim V. Mikhaylenko	MIK.0102	1688

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EXAMINER

VARNER, STEVE M

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 10/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/786,000

Applicant(s)

MIKHAYLENKO ET AL.

Examiner

Steve M Varner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 9 is/are rejected.
- 7) ☒ Claim(s) 2 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the leg threads mentioned in claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim 7 is cancelled.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller et al.

Regarding claim 1, Mueller et al. shows a plate or grille (25) having a plurality of apertures. (Fig. 1) He shows a circumferential wall (12a and 12b) coupled to a top portion of the plate. (Fig. 1) Mueller et al. teaches four hollow sleeves (12c) coupled to the container. (Fig. 1, 4) He teaches an adjustable leg (11) inserted through each of the sleeves. (Fig. 1, 4)

Art Unit: 3635

Regarding claim 5, Mueller et al. teaches a threaded hole (19) perpendicular to the sleeve (12c), a threaded stud (20) engaged in the threaded hole, and a knob (20a) coupled to the threaded stud (20). (Fig. 4)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, 9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller et al.

Regarding claim 2, Mueller et al. shows the basic claimed structure. Mueller et al. does not show circular apertures. Mueller et al.'s non-circular "holes" are functionally equivalent to circular holes. It would have been an obvious design choice to use circular holes in the structure of Mueller et al.

Regarding claim 6, Mueller et al. shows the basic claimed structure. Mueller et al. does not show the legs with a spherical head. Spherical heads are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use spherical heads as a stop on the legs.

Regarding claim 9, the method recited is the obvious method of applying setting material with Mueller et al.'s modified shelf and corner post assembly.

Claims 3, 4, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller et al. in view of Scobie et al.

Art Unit: 3635

Regarding claim 3, 4, Mueller et al. shows the basic claimed structure. Mueller et al. does not show the sleeves threadedly hollow and the legs threaded. Scobie et al. shows threadedly hollow sleeves (22) and threaded legs. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use threaded sleeves and legs to make a tight, adjustable fit between the sleeves and legs.

### ***Claim Objections***

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 8 is allowable for the hollow sleeves coupled to the circumferential wall at the middle of each side of the wall.

### ***Response to Arguments***

Applicant's arguments filed 8/20/02 have been fully considered but they are not persuasive. Mueller et al. does disclose a circumferential wall extending above the plate. Mueller et al. does disclose a threaded hole, substantially perpendicular to the sleeve, a threaded stud engaged in the threaded hole, and a knob coupled to the threaded stud. Examiner maintains that the apertures of Mueller and the instant application are equivalent. Some of the setting material would be retained on Mueller just as in the instant application.

Art Unit: 3635

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Manning reveals molded furniture. James teaches interlocking plastic shelving system. Sammut shows multipurpose freezer tray.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV

October 17, 2002

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600